

## CALL CENTER QUESTIONS & ANSWERS

### RCRA

#### 1. Recognition of a State Variance from the Definition of Solid Waste by Another State

*A business generates a material from an industrial process that it partially reclaims but that must be reclaimed further before the material is completely recovered. The business sought and was granted a variance from the RCRA definition of solid waste for the material by its state implementing agency (40 CFR §260.30). The business would like to send the partially reclaimed material to an affiliate located in another state for further reclamation. However, the business is concerned that the material may be regulated in the receiving state because it was granted a state-specific variance from the definition of solid waste by the original state agency only. Is the implementing agency in the receiving state required to recognize the state-specific variance or is the material subject to RCRA regulation in the receiving state?*

If a material is granted a solid waste variance by one authorized state and is then shipped to another authorized state, the receiving state is not required to recognize the variance if it chooses not to do so; therefore, the material may be subject to RCRA regulation as a solid and hazardous waste in the receiving state. A variance may be granted by an authorized state based upon several regulatory criteria to be weighed by that state (Memo, Shapiro to Nosenchuck; June 19, 1996). However, a state is not

required to recognize a variance granted by another state because an authorized state may always be more stringent in implementing its RCRA program. The facility that was granted the variance may request the receiving states to recognize the variance, and the granting of the variance by the original state may make a compelling argument for recognition by the receiving state.